



The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

L. JOYCE HAMPERS
COMMISSIONER

February 25, 1982

You inquire whether the sales tax on meals applies to sales of meals to employees of federal and state agencies and charitable organizations who are on official business when the meals are purchased and consumed. You also inquire whether the room occupancy excise applies to occupancy by such persons who are on official business at the time of occupancy.

Sales of meals are taxed under Chapter 64H of the General Laws. Chapter 64H, Section 6(d) provides that sales to the United States, the Commonwealth of Massachusetts or any political subdivision thereof, or their respective agencies, are exempt from tax. Also exempt from the sales tax are:

"Sales to any corporation, foundation, organization or institution, which is exempt from taxation under the provisions of section five hundred and one (c)(3) of the Federal Internal Revenue Code, as amended, and in effect for the applicable period; provided, however, that such sales shall not be exempt unless (1) the tangible personal property which is the subject of such sales is used in the conduct of such religious, charitable, educational or scientific enterprise, (2) such corporation, foundation, organization or institution shall have first obtained a certification from the commissioner stating that it is entitled to such exemption, and (3) the vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each such separate sale, and the number of such certificate" (G.L. c. 64H, s. 6(e)).

February 25, 1982

The room occupancy excise is set forth in Chapter 64G of the General Laws. Section 2 of Chapter 64G excludes the following accommodations from the excise:

"(a) lodging accommodations at federal, state or municipal institutions; (b) lodging accommodations at religious, charitable, educational or philanthropic institutions; (c) privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; (d) religious or charitable homes for the aged, infirm, indigent or chronically ill; and (e) summer camps for children operated by religious or charitable organizations."

There are no exclusions or exemptions in Chapter 64G that apply to occupancy of an ordinary hotel or motel room.

The United States Constitution prohibits the imposition of state taxes upon the instrumentalities by which the federal government executes its constitutional powers. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819).

Based on the foregoing, it is ruled that:

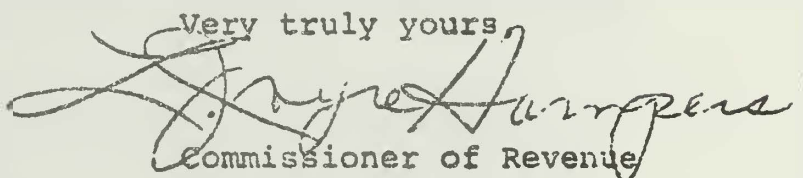
- (1) Sales of meals to employees of federal and state agencies and charitable organizations are subject to tax, whether or not the employees are reimbursed therefor by their employers and whether or not the employees are on official business at the time the meals are purchased and consumed.
- (2) Sales of meals directly to the United States, the Commonwealth of Massachusetts or any political subdivision thereof, or their respective agencies, are exempt from tax.
- (3) Sales of meals directly to states other than Massachusetts or to their political subdivisions or agencies are subject to tax.
- (4) Sales of meals directly to an organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code are exempt from tax if (1) the organization will use the meals in the conduct of its religious, charitable, educational or scientific enterprise; (2) the organization has first obtained a certification

February 25, 1982

(Form ST-2) stating that it is entitled to the exemption; and (3) the vendor keeps the records required under Chapter 64H, Section 6(e).

- (5) The direct rental of rooms by the United States or its agencies is exempt from tax.
- (6) The occupancy of rooms by employees of the United States or its agencies who themselves make payment for the occupancy is subject to tax, whether or not the employees are reimbursed therefor and whether or not they are on official business.
- (7) The occupancy of rooms by employees of any state, its agencies or political subdivisions, and the occupancy of rooms by employees of charitable organizations are subject to tax, whether or not the employees are on official business and whether the employees or their employers make payment for the occupancy.

Very truly yours,



Fayre Hargens

Commissioner of Revenue

LJH:JXD:mf

LR 82-18